

EQUITY FORWARD,
902 Broadway, 6th Floor
New York, NY 10010

V.

Case No. 19-cv-461

U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
200 Independence Avenue SW
Washington, DC 20201

Defendant.

COMPLAINT

1. Plaintiff Equity Forward brings this action against the U.S. Department of Health and Human Services under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant has failed to comply with the applicable time-limit provisions of the FOIA, Equity Forward is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff Equity Forward is a nonpartisan organization committed to the promotion of transparency and accountability in the area of reproductive health, the education of the public about government activities related to reproductive health, and ensuring accountability for malfeasance, fraud, unethical practices, and false information in the area of reproductive health. Through research and FOIA requests, Equity Forward uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government regarding reproductive health through its own public information campaigns and dissemination of information to other public interest groups.

6. Defendant the U.S. Department of Health and Human Services (HHS) is a department of the executive branch of the U.S. government headquartered in Washington, D.C., and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). HHS has possession, custody, and control of the records that Equity Forward seeks.

STATEMENT OF FACTS

7. From October to December 2018, Equity Forward submitted a series of FOIA requests to HHS seeking records reflecting correspondence between certain HHS officials and certain outside organizations or offices.

FOIA Request #1

8. On October 5, 2018, Equity Forward submitted a FOIA request to HHS seeking all records reflecting correspondence between the following HHS officials and any employees or representatives of the following organizations:

HHS Officials:

1. Valerie Huber, Senior Policy Advisor for the Assistant Secretary of Health, from May 29, 2018 until the fulfillment of this request
2. Diane Foley, Deputy Assistant Secretary for Population Affairs, from May 29, 2018 until the fulfillment of this request

3. Steven Valentine, Deputy Chief of Staff for the Assistant Secretary of Health, from March 29, 2018 until the fulfillment of this request.
4. Heidi Stirrup, Deputy Assistant Secretary of Policy at the Administration for Children and Families, from January 20, 2017 until the fulfillment of this request
5. Maggie Wynne, Counselor for Human Services Policy, from January 20, 2017 until the fulfillment of this request
6. Matthew “Matt” Bowman, Deputy General Counsel, from January 20, 2017 until the fulfillment of this request
7. Roger Severino, Director of the Office for Civil Rights, from January 24, 2018 until the fulfillment of this request
8. March Bell, Chief of Staff for the Office for Civil Rights, from January 24, 2018 until the fulfillment of this request
9. Luis Perez, Deputy Director of the Conscience and Religious Freedom Program, from January 20, 2017 until the fulfillment of this request
10. Shannon Royce, Director of Faith Based and Neighborhood Partnerships, from January 24, 2018 until the fulfillment of this request

Organizations:

1. Americans United for Life (for example, email addresses ending in @aul.org)
2. Alliance Defending Freedom (E-mail addresses ending in @adflegal.org)
3. American Association of Pro-Life Obstetricians & Gynecologists (for example, email addresses ending in @aaplog.org)
4. Ascend (for example, email addresses ending in @weascend.org)
5. Becket (E-mail addresses ending in @becketlaw.org)
6. Carenet (E-mail addresses ending in @care-net.org)
7. Center for Medical Progress (E-mail addresses ending in @centerformedicalprogress.org)
8. C-Fam (E-mail addresses ending in @C-Fam.org)
9. Charlotte Lozier Institute (for example, email addresses ending in @lozierinstitute.org)
10. The Ethics & Religious Liberty Commission (E-mail addresses ending in @erlc.com)
11. Family Research Council (for example, email addresses ending in @frc.org)
12. First Liberty Institute (E-mail addresses ending in @firstliberty.org)
13. Focus on the Family (for example, email addresses ending in @FocusontheFamily.com or @fotf.org)
14. Heartbeat International (E-mail addresses ending in @heartbeatinternational.org)
15. Human Coalition (E-mail addresses ending in @humancoalition.org)

16. Human Life International (E-mail addresses ending in @hli.org)
17. Knights of Columbus (for example, email addresses ending in @kofc.org)
18. Live Action
19. National Institute of Family and Life Advocates (for example, email addresses ending in @nifla.org)
20. National Right to Life (for example, email addresses ending in @nrlc.org)
21. Susan B. Anthony List (for example, email addresses ending in @sba-list.org)
22. Thomas More Society (E-mail addresses ending in @thomasmoresociety.org)
23. US Conference of Catholic Bishops (for example, email addresses ending in @usccb.org)
24. The Heritage Foundation AKA "Heritage" (for example, email addresses ending in @heritage.org)

9. Equity Forward has not yet received a tracking number or any other communication from HHS regarding FOIA Request #1.

FOIA Request #2

10. On November 9, 2018, Equity Forward submitted a FOIA request to HHS seeking all records reflecting correspondence between the following HHS officials and any employees or representatives of the following organizations/offices:

HHS Officials:

1. Valerie Huber, Senior Policy Advisor for the Assistant Secretary of Health, from June 15, 2018 until the fulfillment of this request
2. Steven Valentine, Deputy Chief of Staff for the Assistant Secretary of Health, from June 15, 2018 until the fulfillment of this request

Organizations:

1. Americans United for Life (for example, email addresses ending in @aul.org)
2. Susan B. Anthony List (for example, email addresses ending in @sba-list.org)
3. Charlotte Lozier Institute (for example, email addresses ending in @lozierinstitute.org)
4. Billy Valentine
5. Steven Valentine Sr.
6. Any representatives of the office of Rep. Chris Smith
7. Any representatives of the office of Rep. Vicky Hartzler

8. Any representatives of the office of Rep. Dan Lipinski
11. Equity Forward has not yet received a tracking number or any other communication from HHS regarding FOIA Request #2.

FOIA Request #3

12. Also on November 9, 2018, Equity Forward submitted a FOIA request to HHS seeking all records reflecting correspondence between HHS Deputy General Counsel Matthew “Matt” Bowman and any of the following individuals or employees/representatives of the following organizations:

1. Alliance Defending Freedom (for example, email addresses ending in @adflegal.org)
2. The Heritage Foundation (for example, email addresses ending in @heritage.org)
3. Susan B. Anthony List (for example, email addresses ending in @sba-list.org)
4. Operation Save America (for example, email addresses ending in @operationsaveamerica.org)
5. Operation Rescue (for example, email addresses ending in @operationrescue.org)
6. Will Goodman
7. Chris McKenna
8. Trish McKenna
9. Bryan Kemper
10. Kneale Ewig
11. EJ Suh
12. Flip Benham

13. The request sought all records from January 1, 2017, until fulfillment of the request.

14. On December 10, 2018, HHS sent Equity Forward an acknowledgement letter assigning FOIA Request #3 tracking number 2019-00285-FOIA-OS.

15. Equity Forward has not received any further communication from HHS regarding FOIA Request #3.

FOIA Request #4

16. On November 13, 2018, Equity Forward submitted a FOIA request to HHS seeking all records reflecting correspondence between the following HHS officials and any employees or representatives of the following organizations:

HHS Officials:

1. Scott Lloyd, Director of the Office of Refugee Resettlement, from December 17, 2017 until the fulfillment of this request
2. Steven Wagner, Acting Assistant Secretary of the Administration for Children and Families, from May 14, 2017 until the fulfillment of this request
3. Mary Powers, Policy Advisor for the Administrator for Children and Families, from January 21, 2017 until the fulfillment of this request

Organizations:

1. Americans United for Life (for example, email addresses ending in @aul.org)
2. American Association of Pro-Life Obstetricians & Gynecologists (for example, email addresses ending in @aaplog.org)
3. Ascend (for example, email addresses ending in @weascend.org)
4. Charlotte Lozier Institute (for example, email addresses ending in @lozierinstitute.org)
5. Family Research Council (for example, email addresses ending in @frc.org)
6. Focus on the Family (for example, email addresses ending in @FocusontheFamily.com or @fotf.org)
7. Knights of Columbus (for example, email addresses ending in @kofc.org)
8. National Right to Life (for example, email addresses ending in @nrlc.org)
9. Susan B. Anthony List (for example, email addresses ending in @sba-list.org)
10. US Conference of Catholic Bishops (for example, email addresses ending in @usccb.org)
11. The Heritage Foundation AKA "Heritage" (for example, email addresses ending in @heritage.org)

17. HHS assigned FOIA Request #4 tracking number 2019-00235-FOIA-OS.

18. Equity Forward has not received any further communication from HHS regarding FOIA Request #4.

FOIA Request #5

19. On December 6, 2018, Equity Forward submitted a FOIA request to HHS seeking the following records regarding meetings held by HHS Secretary Alex Azar and any outside anti-abortion groups and advocates:

1. The invitation distributed to the outside groups meeting with Azar
2. Any documents and/or correspondence which identify the HHS officials involved in the meeting including, but not limiting, participating in the meeting, providing briefs and/or background information for parties involved, and those involved in scheduling the meeting
3. Any documents created by HHS which identify the outside groups and/or advocates who attended the meeting
4. Any calendar invites, schedules, staff calendars, and HHS visitor logs regarding the meeting
5. Any meeting agendas, briefs, prepared memos, or similar documents created by HHS officials in preparation of the meeting
6. Any notes taken by/created by HHS officials during the meeting/listening session.

“Anti-abortion groups” and “advocates” include the following organizations:

1. American Association of Pro-Life OBGYNs (AAPLOG)
2. Alliance Defending Freedom (E-mail addresses ending in @adflegal.org)
3. Americans United for Life (E-mail addresses ending in @aul.org)
4. American Life League
5. Ascend (E-mail addresses ending in @weascend.org)
6. Becket (E-mail addresses ending in @becketlaw.org)
7. Carenet (E-mail addresses ending in @care-net.org)
8. Center for Medical Progress (E-mail addresses ending in @centerformedicalprogress.org)
9. C-Fam (E-mail addresses ending in @C-Fam.org)
10. Charlotte Lozier Institute (E-mail addresses ending in @lozierinstitute.org)
11. The Ethics & Religious Liberty Commission (E-mail addresses ending in @erlc.com)
12. Family Research Council (E-mail addresses ending in @frc.org)
13. Family Research Council (FRC) Action
14. First Liberty Institute (E-mail addresses ending in @firstliberty.org)
15. Focus on the Family (E-mail addresses ending in @FocusontheFamily.com or @fotf.org)

16. Heartbeat International (E-mail addresses ending in @heartbeatinternational.org)
17. Human Coalition (E-mail addresses ending in @humancoalition.org)
18. Human Life International (E-mail addresses ending in @hli.org)
19. Knights of Columbus
20. Live Action (E-mail addresses ending in @liveaction.org)
21. March for Life
22. National Institute of Family and Life Advocates (E-mail addresses ending in @nifla.org)
23. National Right to Life (E-mail addresses ending in @nrlc.org)
24. Susan B. Anthony List (E-mail addresses ending in @sba-list.org)
25. Thomas More Society (E-mail addresses ending in @thomasmoresociety.org)
26. US Conference of Catholic Bishops
27. The Heritage Foundation AKA “Heritage” (for example, email addresses ending in @heritage.org)

20. On December 7, 2018, HHS informed Equity Forward that it had received FOIA Request #5 and assigned it tracking number 2019-00344-FOIA-OS.

21. Equity Forward has not received any further communication from HHS regarding FOIA Request #5.

FOIA Request #6

22. Also on December 6, 2018, Equity Forward submitted a FOIA request to HHS seeking the following records between January 21, 2017, and the date of the fulfillment of the request:

HHS Officials

1. Matthew “Matt” Bowman, Deputy General Counsel
2. Brett Giroir, Assistant Secretary
3. Valerie Huber, Senior Policy Advisor for the Assistant Secretary of Health
4. Steven Valentine, Deputy Chief of Staff for the Assistant Secretary of Health
5. Diane Foley, Deputy Assistant Secretary for Population Affairs
6. Theresa Manning, Former Deputy Assistant Secretary for Population Affairs

Requested Records:

1. Correspondence between the listed officials and the following outside groups regarding Title X:
 - a. American Association of Pro-Life OB/GYNs (AAPLOG)
 - b. Alliance Defending Freedom (E-mail addresses ending in @adflegal.org)
 - c. Americans United for Life (E-mail addresses ending in @aul.org)
 - d. American Life League
 - e. Ascend (E-mail addresses ending in @weascend.org)
 - f. Becket (E-mail addresses ending in @becketlaw.org)
 - g. Carenet (E-mail addresses ending in @care-net.org)
 - h. Center for Medical Progress (E-mail addresses ending in @centerformedicalprogress.org)
 - i. C-Fam (E-mail addresses ending in @C-Fam.org)
 - j. Charlotte Lozier Institute (E-mail addresses ending in @lozierinstitute.org)
 - k. The Ethics & Religious Liberty Commission (E-mail addresses ending in @erlc.com)
 - l. Family Research Council (E-mail addresses ending in @frc.org)
 - m. Family Research Council (FRC) Action
 - n. First Liberty Institute (E-mail addresses ending in @firstliberty.org)
 - o. Focus on the Family (E-mail addresses ending in @FocusontheFamily.com or @fotf.org)
 - p. Heartbeat International (E-mail addresses ending in @heartbeatinternational.org)
 - q. Human Coalition (E-mail addresses ending in @humancoalition.org)
 - r. Human Life International (E-mail addresses ending in @hli.org)
 - s. Knights of Columbus
 - t. Live Action (E-mail addresses ending in @liveaction.org)
 - u. March for Life
 - v. National Institute of Family and Life Advocates (E-mail addresses ending in @nifla.org)
 - w. National Right to Life (E-mail addresses ending in @nrlc.org)
 - x. Susan B. Anthony List (E-mail addresses ending in @sba-list.org)
 - y. Thomas More Society (E-mail addresses ending in @thomasmoresociety.org)
 - z. US Conference of Catholic Bishops
 - aa. The Heritage Foundation AKA "Heritage" (for example, email addresses ending in @heritage.org)

2. Internal communications between the listed officials and any other HHS employees regarding Title X.
23. Equity Forward has not yet received a tracking number or any other communication from HHS regarding FOIA Request #6.

Exhaustion of Administrative Remedies

24. As of the date of this complaint, HHS has failed to (a) notify Equity Forward of any determination regarding its FOIA requests, including the scope of any responsive records HHS intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

25. Through HHS's failure to respond to Equity Forward's FOIA requests within the time period required by law, Equity Forward has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Search for Responsive Records

26. Equity Forward repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

27. Equity Forward properly requested records within the possession, custody, and control of HHS.

28. HHS is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

29. HHS has failed to promptly review agency records for the purpose of locating those records which are responsive to Equity Forward's FOIA requests.

30. HHS's failure to conduct an adequate search for responsive records violates FOIA.

31. Plaintiff Equity Forward is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to Equity Forward's FOIA requests.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

32. Equity Forward repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

33. Equity Forward properly requested records within the possession, custody, and control of HHS.

34. HHS is an agency subject to FOIA and must therefore release in response to a FOIA requests any non-exempt records and provide a lawful reason for withholding any materials.

35. HHS is wrongfully withholding non-exempt agency records requested by Equity Forward by failing to produce non-exempt records responsive to its FOIA requests.

36. HHS is wrongfully withholding non-exempt agency records requested by Equity Forward by failing to segregate non-exempt information in otherwise exempt records responsive to Equity Forward's FOIA requests.

37. HHS's failure to provide all non-exempt responsive records violates FOIA.

38. Plaintiff Equity Forward is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, Equity Forward respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to Equity Forward's FOIA requests;
- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to Equity Forward's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Equity Forward's FOIA requests;
- (4) Award Equity Forward the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant Equity Forward such other relief as the Court deems just and proper.

Dated: February 25, 2019

Respectfully submitted,

/s/ Sara Kaiser Creighton
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